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In re Application of :
YAP et al. :
Application No.: 09/868,553 :
PCT No.: PCT/EP99/10179 : DECISION
Int. Filing Date: 16 December 1999 :
Priority Date: 18 December 1998 :
Attorney Docket No.: 9250-37 :
For: HEPATITIS Y VIRUS :

This is a decision on applicant's "Petition for Earlier Date of Acceptance under 37 CFR 1.182 or 1.183" filed in the United States Patent and Trademark Office (USPTO) on 09 May 2003.

BACKGROUND

On 18 June 2001, applicant filed a request to enter into the national stage under 35 U.S.C. 371 along with the appropriate basic national filing fee. No declaration was filed.

On 07 September 2001, a Notification of Missing Requirements was mailed to applicant indicating that an oath or declaration was required.

On 07 November 2001, applicant mailed via first class mail, with a Certificate of Mailing under 37 CFR 1.8, an executed declaration and a check for \$130. The executed declaration was received in the United States Patent and Trademark Office on 18 January 2002.

On 07 April 2003, a Notification of Acceptance was issued identifying the 35 U.S.C. 371(c) date as 18 January 2002. Subsequently, an Official Filing Receipt was issued indicating a "FILING DATE" of 18 January 2002.

On 09 May 2003, applicant filed a "Petition for Earlier Date of Acceptance under 37 CFR 1.182 or 1.183" which included, *inter alia*: a copy of a USPTO date-stamped itemized postcard receipt dated 18 January 2002, a copy of the filing receipt and a copy of the Notification of Acceptance.

DISCUSSION

Applicant requests that the Notification of Acceptance and the Filing Receipt be corrected to indicate a filing date of 07 November 2001, rather than 18 January 2002. The actual filing date of the present application is the international filing date, i.e., 19 December 1999. (See 35 U.S.C. 363) The date in the filing date portion on the filing receipt of a national stage application is the date upon which the requirements set forth in 35 U.S.C. 371(c) for entry into the national stage were completed. (See MPEP §1895.01) A review of the application file reveals that the declaration was filed with the USPTO on 18 January 2002, the date which the requirements set forth in 35 U.S.C. 371(c) for entry into the national stage were completed. Therefore, the correction of the "FILING DATE" on the filing receipt to indicate a date of 07 November 2002 is not proper since applicant completed the requirements set forth in 35 U.S.C. 371(c) on 18 January 2002. (Note MPEP section 1893.03(b)).

37 CFR 1.8 provides that correspondence required to be filed in the USPTO within a set period of time will be considered as being *timely filed* if the procedure described in this section is followed. The actual date of receipt will be used for all other purposes. 37 CFR 1.8 applies to the timely filing of documents with the Office, not to the date of receipt accorded those documents. See MPEP §512, which states that the Office will continue its normal practice of stamping the date of receipt on all papers received through the mail except those filed under 37 CFR 1.10. The date stamped will also be the date which is entered on Office records and from which any subsequent periods are calculated.

37 CFR 1.8 permits applicants to certify that papers were mailed to the USPTO by first class mail on a particular date. By utilizing the procedure set forth in 37 CFR 1.8, any correspondence required to be filed in the USPTO within a set time period, e.g. a reply to an Office action, would be considered as being timely filed if the document mailing complies with 37 CFR 1.8 and is mailed prior to expiration of the time period set by the USPTO. The date of actual receipt of the document is used for all other purposes.

Certificates of Mailing Under 37 CFR 1.8 were discussed and published in 1251 OG 55 (09 October 2001) (signed on September 13, 2001) as set forth below:

Parties submitting correspondence to the USPTO are reminded that 37 CFR 1.8 (certificate of mailing or transmission practice) does not provide for according a filing date as of the date of deposit with the USPS to correspondence submitted under 37 CFR 1.8. Therefore, it would be inappropriate to file a petition under 37 CFR 1.183 or 2.146(a)(5) and 2.148 to waive the requirements of 37 CFR 1.8. (Emphasis added.)

Accordingly, it is inappropriate, on the present record, to accord the application a corrected filing date of 07 November 2001. The correct filing date is 18 January 2002.

CONCLUSION

Applicant's request for the issuance of a corrected filing receipt indicating a "Filing Date" of 07 November 2002, is **DISMISSED** without prejudice.

The application will be returned to Art Unit 1646 for further prosecution in due course.

A handwritten signature in black ink, reading "Cynthia M. Kratz". The signature is fluid and cursive, with the first name "Cynthia" being more prominent and the last name "Kratz" following in a similar style.

Cynthia M. Kratz

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